



April 6, 2007

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## ENGROSSED HOUSE BILL No. 1410

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DIGEST OF HB 1410 (Updated April 4, 2007 12:23 pm - DI 106)

**Citations Affected:** IC 10-13; IC 12-7; IC 20-26; IC 34-30; IC 35-38.

**Synopsis:** Criminal history checks. Exempts a post-secondary school of education from paying a fee for a limited criminal history record for a student before the student begins the student's field or classroom experience. Requires a criminal history background check for: (1) an applicant for employment; (2) a volunteer; or (3) a contract employee; with a school corporation who begins employment after June 30, 2007. Specifies that the background check must include a check of the sex offender registry in all 50 states, and either: (1) a national background check; or (2) an expanded background check (a check of county records for the preceding 10 years in states in which the subject of the check resided). Requires the background check to be completed at least three months after the individual begins employment. Specifies the results of the criminal history background check may include only: (1) criminal history data with disposition information; and (2) information  
(Continued next page)

**Effective:** July 1, 2007.

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### Hoy, Koch, Porter, Crouch

(SENATE SPONSORS — STEELE, HERSHMAN, BECKER)

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January 16, 2007, read first time and referred to Committee on Education.  
January 23, 2007, reassigned to Committee on Courts and Criminal Code.  
February 6, 2007, amended, reported — Do Pass.  
February 12, 2007, read second time, amended, ordered engrossed.  
February 13, 2007, engrossed. Read third time, passed. Yeas 94, nays 0.

SENATE ACTION

February 19, 2007, read first time and referred to Committee on Corrections, Criminal, and Civil Matters.  
April 5, 2007, amended, reported favorably — Do Pass.

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EH 1410—LS 7658/DI 106+



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with respect to any arrest or criminal charge that occurred less than one year before the date the background check was initiated even if a disposition concerning the arrest or criminal charge has not been entered. Allows a school corporation to enter into an agreement with a private entity that is subject to the federal Fair Credit Reporting Act to perform criminal background checks, and requires the private entity to: (1) include a disclaimer explaining what information is not included in the check; and (2) note that an arrest or a pending charge is not evidence of guilt. Makes it a Class A infraction for a private entity to disclose information compiled as part of a criminal history check for another purpose without the written authorization of the person who is the subject of the check. Specifies that a limited criminal history check includes arrests even if there is no disposition. Requires requests for limited criminal history submitted by noncriminal justice agencies and individuals to be name based, and requires the state police department to inform persons who receive criminal history information of the scope of the information. Requires a court to order a convicted defendant to be fingerprinted unless the defendant was arrested and processed at the county jail, and requires the security and privacy council to adopt rules to ensure the uniform and efficient submission of criminal history data to the state police department. Grants civil immunity to prosecuting attorneys, clerks, and law enforcement officials for good faith errors or omissions that relate to the transmission of fingerprints or other criminal history data. Permits an employer to request a limited criminal history check of an employee who provides services involving contact with children or individuals who are mentally ill or disabled. Makes other changes and conforming amendments.

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April 6, 2007

First Regular Session 115th General Assembly (2007)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2006 Regular Session of the General Assembly.

## ENGROSSED HOUSE BILL No. 1410

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A BILL FOR AN ACT to amend the Indiana Code concerning education.

*Be it enacted by the General Assembly of the State of Indiana:*

1       SECTION 1. IC 10-13-3-11, AS AMENDED BY P.L.20-2006,  
2       SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
3       JULY 1, 2007]: Sec. 11. ~~(a)~~ As used in this chapter, "limited criminal  
4       history" means information with respect to any arrest or criminal  
5       charge, which must include:

6               (1) a disposition, **if the disposition is known**; and

7               (2) a photograph of the person who is the subject of the limited  
8       criminal history, if a photograph is available.

9       ~~(b) However, the term includes information about any arrest or~~  
10      ~~criminal charge that occurred less than one (1) year before the date of~~  
11      ~~a request even if no disposition has been entered.~~

12      SECTION 2. IC 10-13-3-11.5 IS ADDED TO THE INDIANA  
13      CODE AS A **NEW** SECTION TO READ AS FOLLOWS  
14      [EFFECTIVE JULY 1, 2007]: Sec. 11.5. **As used in this chapter,**  
15      **"name based limited criminal history check" means a search of**  
16      **criminal history data maintained by the department that:**

17              (1) **is conducted using the subject's name and other**

EH 1410—LS 7658/DI 106+



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1 identifying information that reasonably ensures the  
2 identification of the subject; and

3 **(2) does not use fingerprint identification or another method**  
4 **of positive identification.**

5 SECTION 3. IC 10-13-3-19 IS AMENDED TO READ AS  
6 FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 19. As used in this  
7 chapter, "request" means asking for release or inspection of a limited  
8 criminal history by noncriminal justice organizations or individuals in  
9 a manner that:

10 (1) **provides the subject's name and other information that**  
11 reasonably ensures the identification of the subject of the inquiry;  
12 and

13 (2) contains a statement of the purpose for which the information  
14 is requested.

15 SECTION 4. IC 10-13-3-27, AS AMENDED BY P.L.1-2006,  
16 SECTION 171, AND AS AMENDED BY P.L.140-2006, SECTION 5  
17 AND P.L.173-2006, SECTION 5, IS CORRECTED AND AMENDED  
18 TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 27. (a)  
19 Except as provided in subsection (b), ~~on request in response to a~~  
20 **request for a name based limited criminal history check from a**  
21 **noncriminal justice organization or an individual**, a law  
22 enforcement agency shall release a limited criminal history to or allow  
23 inspection of a limited criminal history by ~~the noncriminal justice~~  
24 ~~organizations~~ **organization** or ~~individuals~~ **the individual** only if the  
25 subject of the request:

26 (1) has applied for employment with ~~a~~ **the** noncriminal justice  
27 organization or individual;

28 (2) has applied for a license and *has provided* criminal history  
29 data ~~is~~ *as* required by law to be provided in connection with the  
30 license;

31 (3) is a candidate for public office or a public official;

32 (4) is in the process of being apprehended by a law enforcement  
33 agency;

34 (5) is placed under arrest for the alleged commission of a crime;

35 (6) has charged that the subject's rights have been abused  
36 repeatedly by criminal justice agencies;

37 (7) is the subject of a judicial decision or determination with  
38 respect to the setting of bond, plea bargaining, sentencing, or  
39 probation;

40 (8) has volunteered services that involve contact with, care of, or  
41 supervision over a child who is being placed, matched, or  
42 monitored by a social services agency or a nonprofit corporation;

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**(9) is employed by the noncriminal justice organization or the individual to provide services that involve contact with, care of, or supervision over:**

**(A) a child; or**

**(B) an individual who is:**

**(i) a mentally ill individual (as defined in IC 12-7-2-131);**

**(ii) physically disabled; or**

**(iii) a developmentally disabled individual (as defined in IC 12-7-2-62);**

~~(9)~~ **(10)** is currently residing in a location designated by the department of child services (established by ~~IC 31-33-1.5-2~~ IC 31-25-1-1) or by a juvenile court as the out-of-home placement for a child at the time the child will reside in the location;

~~(10)~~ **(11)** has volunteered services at a public school (as defined in IC 20-18-2-15) or nonpublic school (as defined in IC 20-18-2-12) that involve contact with, care of, or supervision over a student enrolled in the school;

~~(11)~~ **(12)** is being investigated for welfare fraud by an investigator of the division of family resources or a county office of family and children;

~~(12)~~ **(13)** is being sought by the parent locator service of the child support bureau of the ~~division~~ department of ~~family and children;~~ child services;

~~(13)~~ **(14)** is or was required to register as a sex ~~and violent~~ offender under ~~IC 5-2-12~~ IC 11-8-8; or

~~(14)~~ **(15)** has been convicted of any of the following:

(A) Rape (IC 35-42-4-1), if the victim is less than eighteen (18) years of age.

(B) Criminal deviate conduct (IC 35-42-4-2), if the victim is less than eighteen (18) years of age.

(C) Child molesting (IC 35-42-4-3).

(D) Child exploitation (IC 35-42-4-4(b)).

(E) Possession of child pornography (IC 35-42-4-4(c)).

(F) Vicarious sexual gratification (IC 35-42-4-5).

(G) Child solicitation (IC 35-42-4-6).

(H) Child seduction (IC 35-42-4-7).

(I) Sexual misconduct with a minor as a felony (IC 35-42-4-9).

(J) Incest (IC 35-46-1-3), if the victim is less than eighteen (18) years of age.

However, limited criminal history information obtained from the National Crime Information Center may not be released under this section except to the extent permitted by the Attorney General of the

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United States.

(b) **In response to a request for a name based limited criminal history check from the noncriminal justice organization**, a law enforcement agency shall allow inspection of a limited criminal history by and release a limited criminal history to **any of** the following noncriminal justice organizations:

- (1) Federally chartered or insured banking institutions.
- (2) Officials of state and local government for any of the following purposes:
  - (A) Employment with a state or local governmental entity.
  - (B) Licensing.
- (3) Segments of the securities industry identified under 15 U.S.C. 78q(f)(2).

(c) **The department shall provide a noncriminal justice organization or an individual who requests a limited criminal history check under this section with the following notice in writing:**

**"The results of the criminal background check you have requested include only records of arrests or convictions that occurred in Indiana. These results do not include any arrests or convictions that may have occurred in another state, nor do they include an arrest or delinquency finding that may have occurred while the subject was a minor."**

~~(c)~~ (d) Any person who **knowingly or intentionally** uses limited criminal history for any purpose not specified under this section commits a Class A misdemeanor.

SECTION 5. IC 10-13-3-33 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 33. (a) The council shall adopt rules under IC 4-22-2 to:

- (1) assure the completeness and accuracy of criminal history data;
- (2) protect information from loss, alteration, destruction, or improper direct access to the information files;
- (3) prevent unreasonable interference with the regular discharge of the duties of employees of law enforcement agencies; ~~and~~
- (4) establish procedures to ensure the uniform and efficient transmission of criminal history data to the department, including the development of an electronic format for the submission of criminal history data; and**
- ~~(4)~~ **(5)** carry out this chapter.

(b) If a person makes a challenge under section 31(b) of this chapter, the department shall:

- (1) make the changes requested, if it determines the data is in

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error; or

(2) conduct a hearing under IC 4-21.5-3, if requested by the person making the challenge.

(c) The rules adopted under this chapter must provide for inspection in a reasonable and timely manner.

SECTION 6. IC 10-13-3-36, AS AMENDED BY SEA 526-2007, SECTION 147, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 36. (a) The department may not charge a fee for responding to a request for ~~the release of a name based~~ limited criminal history ~~record~~ **check** if the request is made by a nonprofit organization:

(1) that has been in existence for at least ten (10) years; and

(2) that:

(A) has a primary purpose of providing an individual relationship for a child with an adult volunteer if the request is made as part of a background investigation of a prospective adult volunteer for the organization;

(B) is a home health agency licensed under IC 16-27-1;

(C) is a community mental retardation and other developmental disabilities center (as defined in IC 12-7-2-39);

(D) is a supervised group living facility licensed under IC 12-28-5;

(E) is an area agency on aging designated under IC 12-10-1;

(F) is a community action agency (as defined in IC 12-14-23-2);

(G) is the owner or operator of a hospice program licensed under IC 16-25-3; or

(H) is a community mental health center (as defined in IC 12-7-2-38).

(b) Except as provided in subsection (d), the department may not charge a fee for responding to a request for ~~the release of a name based~~ limited criminal history ~~record~~ **check** made by the department of child services or the division of family resources if the request is made as part of a background investigation of an applicant for a license under IC 12-17.2 or IC 31-27.

(c) The department may not charge a fee for responding to a request for ~~the release of a name based~~ limited criminal history **check** if the request is made by a school corporation, special education cooperative, or nonpublic school (as defined in IC 20-18-2-12) as part of a background investigation of a prospective or current employee or a prospective or current adult volunteer for the school corporation, special education cooperative, or nonpublic school.

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(d) As used in this subsection, "state agency" means an authority, a board, a branch, a commission, a committee, a department, a division, or another instrumentality of state government, including the executive and judicial branches of state government, the principal secretary of the senate, the principal clerk of the house of representatives, the executive director of the legislative services agency, a state elected official's office, or a body corporate and politic, but does not include a state educational institution. The department may not charge a fee for responding to a request for ~~the release of a~~ **name based** limited criminal history **check** if the request is made:

(1) by a state agency; and

(2) through the computer gateway that is administered by the office of technology established by IC 4-13.1-2-1.

(e) The department may not charge a fee for responding to a request for ~~the release of a~~ **name based** limited criminal history record **check** made by the Indiana professional licensing agency established by IC 25-1-5-3 if the request is:

(1) made through the computer gateway that is administered by the office of technology; and

(2) part of a background investigation of a practitioner or an individual who has applied for a license issued by a board (as defined in IC 25-1-9-1).

(f) The department may not charge a church or religious society a fee for responding to a request for ~~the release of a~~ **name based** limited criminal history record **check** if:

(1) the church or religious society is a religious organization exempt from federal income taxation under Section 501 of the Internal Revenue Code;

(2) the request is made as part of a background investigation of a prospective or current employee or a prospective or current adult volunteer; and

(3) the employee or volunteer works in a nonprofit program or ministry of the church or religious society, including a child care ministry registered under IC 12-17.2-6.

**(g) The department may not charge the school of education of a public or private postsecondary educational institution a fee for responding to a request for a name based limited criminal history record check if the request is made as part of a background investigation of a student before or after the student begins the student's field or classroom experience.**

SECTION 7. IC 12-7-2-61 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 61. "Developmental

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disability" means the following:

(1) Except as provided in subdivision (2), before July 1, 1993, the term means a disability of an individual that:

(A) is attributable to:

- (i) mental retardation, cerebral palsy, epilepsy, or autism;
- (ii) any other condition found to be closely related to mental retardation, because this condition results in similar impairment of general intellectual functioning or adaptive behavior or requires similar treatment and services; or
- (iii) dyslexia resulting from a disability described in this subdivision;

(B) originates before the person is eighteen (18) years of age;

(C) has continued or is expected to continue indefinitely; and

(D) constitutes a substantial disability to the individual's ability to function normally in society.

(2) For purposes of IC 12-10-7 and IC 12-28-1 before July 1, 1993, ~~and for purposes of IC 12-12-1~~ **this title** after June 30, 1993, **and for purposes of IC 10-13-3-27**, the term means a severe, chronic disability of an individual that:

(A) is attributable to a mental or physical impairment, or a combination of mental and physical impairments (other than a sole diagnosis of mental illness);

(B) is manifested before the individual is twenty-two (22) years of age;

(C) is likely to continue indefinitely;

(D) reflects the individual's need for a combination and sequence of special, interdisciplinary, or generic care, treatment, or other services that are of lifelong or extended duration and are individually planned and coordinated; and

(E) results in substantial limitations in at least three (3) of the following:

- (i) Self-care.
- (ii) Receptive and expressive language.
- (iii) Learning.
- (iv) Mobility.
- (v) Self-direction.
- (vi) Capacity for independent living.
- (vii) Economic self-sufficiency.

SECTION 8. IC 20-26-5-10, AS ADDED BY P.L.1-2005, SECTION 10, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 10. (a) **As used in this chapter, "expanded criminal history check" means a criminal history background**

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check of an individual that includes a search of records from a period of ten (10) years preceding the date of the background check that are maintained by:

- (1) a county in Indiana; and
- (2) a county in another state, if the individual who is the subject of the background check resided in another state within the ten (10) year period preceding the date of the background check.

(b) A school corporation, including a school township, shall adopt a policy concerning criminal history information for individuals who:

- (1) apply for:
  - (A) employment with the school corporation; or
  - (B) employment with an entity with which the school corporation contracts for services;
- (2) seek to enter into a contract to provide services to the school corporation; or
- (3) are employed by an entity that seeks to enter into a contract to provide services to the school corporation; or
- (4) volunteer with the school corporation;

if the individuals are likely to have direct, ongoing contact with children within the scope of the individuals' employment.

(c) A school corporation, including a school township, shall administer a policy adopted under this section uniformly for all individuals to whom the policy applies.

(d) A policy adopted under this section must require a check of sex offender registries in all fifty (50) states, and:

- (1) an expanded criminal history check; or
- (2) a national criminal history background check;

for each individual whose employment with the school corporation begins after June 30, 2007 and for each individual having direct contact with children who enters into a contract with the school corporation or is employed by an entity that has a contract with a school corporation after June 30, 2007. A background check required under this subsection must be completed not later than three (3) months after the individual begins employment or volunteer service with the school corporation. In addition, a policy adopted under this section must require the person who provides the background check to the school corporation to include a disclaimer clearly explaining what information is not included in the background check, and prominently noting that an arrest or a pending charge is not evidence of guilt.

(e) The results of a criminal history background check, as

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described in subsection (d), may include only:

- (1) criminal history data with disposition information; and
- (2) information with respect to any arrest or criminal charge that occurred less than one (1) year before the date the background check was initiated even if a disposition concerning the arrest or criminal charge has not been entered.

(f) Notwithstanding IC 10-13-3-39, a school corporation, including a school township, may enter into an agreement with a private entity that is subject to the Fair Credit Reporting Act (15 U.S.C. 1681 et seq.) to perform a criminal history background check under this section. In evaluating a private entity, the school corporation shall consider the entity's compliance with subsection (j).

(g) A policy adopted under this section may require any of the following:

- (1) The school corporation, including a school township, may request ~~limited~~ criminal history information concerning each **volunteer or** applicant for noncertificated employment or certificated employment from a local or state law enforcement agency before or not later than three (3) months after the **volunteer's or** applicant's employment by the school corporation.
- (2) Each **volunteer or** individual hired for noncertificated employment or certificated employment may be required to provide a written consent for the school corporation to request under IC 10-13-3 ~~limited~~ criminal history information ~~or a national criminal history background check~~ concerning the **volunteer or** individual before or not later than three (3) months after the individual's employment by the school corporation ~~or the volunteer begins volunteering~~. The school corporation may require the **volunteer or** individual to provide a set of fingerprints and pay any fees required for a ~~national~~ criminal history background check.
- (3) Each **volunteer or** individual hired for noncertificated employment may be required at the time the **volunteer begins volunteering or the** individual is hired to submit a certified copy of the **volunteer's or** individual's limited criminal history (as defined in IC 10-13-3-11) to the school corporation.
- (4) Each **volunteer or** individual hired for noncertificated employment may be required at the time the **volunteer begins volunteering or the** individual is hired to:

- (A) submit a request to the Indiana central repository for

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1 limited criminal history information under IC 10-13-3;  
 2 (B) obtain a copy of the **volunteer's or** individual's limited  
 3 criminal history; and  
 4 (C) submit to the school corporation the **volunteer's or**  
 5 individual's limited criminal history and a document verifying  
 6 a disposition (as defined in IC 10-13-3-7) that does not appear  
 7 on the limited criminal history.

8 (5) Each **volunteer or** applicant for noncertificated employment  
 9 or certificated employment may be required at the time the  
 10 **volunteer or** individual applies to answer questions concerning  
 11 the **volunteer's or** individual's ~~limited~~ criminal history. The  
 12 failure to answer honestly questions asked under this subdivision  
 13 is grounds for termination of the employee's employment **or the**  
 14 **volunteer's volunteer opportunity**.

15 (6) Each individual that:

16 (A) seeks to enter into a contract to provide services to a  
 17 school corporation; ~~or~~

18 (B) is employed by an entity that seeks to enter into a contract  
 19 with a school corporation; **or**

20 **(C) volunteers with a school corporation;**

21 may be required at the time the contract is formed to comply with  
 22 the procedures described in subdivisions (2), (4), and (5). An  
 23 individual who is employed by an entity that seeks to enter into a  
 24 contract with a school corporation **or who volunteers** to provide  
 25 student services in which the **volunteer has or the** entity's  
 26 employees have direct contact with students in a school based  
 27 program may be required to provide the consent described in  
 28 subdivision (2) or the information described in subdivisions (4)  
 29 and (5) to either the individual's employer or the school  
 30 corporation. Failure to comply with subdivisions (2), (4), and (5),  
 31 as required by the school corporation, is grounds for termination  
 32 of the contract **or volunteer opportunity**. An entity that enters  
 33 into a contract **or volunteer opportunity** with a school  
 34 corporation to provide student services in which the entity's  
 35 employees have direct contact with students in a school based  
 36 program is allowed to obtain limited criminal history information  
 37 or a national criminal history background check regarding the  
 38 entity's applicants or employees in the same manner that a school  
 39 corporation may obtain the information.

40 ~~(e)~~ **(h)** If an individual is required to obtain a ~~limited~~ criminal  
 41 history under this section, the individual is responsible for all costs  
 42 associated with obtaining the ~~limited~~ criminal history. **However, the**

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1 school corporation may elect to pay costs associated with obtaining  
 2 a criminal history background check as described under subsection  
 3 (d).

4 ~~(d)~~ (i) Information obtained under this section must be used in  
 5 accordance with IC 10-13-3-29 or **IC 10-13-3-39(g)**.

6 (j) A private entity that has entered into a contract with a school  
 7 corporation to perform a criminal history check under this section  
 8 may not use the information compiled as part of the criminal  
 9 history check of the individual for any other purpose without the  
 10 express written consent of the individual who is the subject of the  
 11 criminal history check. A private entity that violates this subsection  
 12 commits a Class A infraction.

13 SECTION 9. IC 34-30-2-149.5 IS ADDED TO THE INDIANA  
 14 CODE AS A NEW SECTION TO READ AS FOLLOWS  
 15 [EFFECTIVE JULY 1, 2007]: **Sec. 149.5. IC 35-38-1-28 (Concerning**  
 16 **errors or omissions in the transmission of fingerprints, case history**  
 17 **data, or sentencing data).**

18 SECTION 10. IC 35-38-1-28 IS ADDED TO THE INDIANA  
 19 CODE AS A NEW SECTION TO READ AS FOLLOWS  
 20 [EFFECTIVE JULY 1, 2007]: **Sec. 28. (a) Except as provided in**  
 21 **subsection (c), immediately after sentencing for an offense, the**  
 22 **court shall order the defendant to be fingerprinted by an individual**  
 23 **qualified to take fingerprints. The fingerprints may be recorded in**  
 24 **any reliable manner, including by the use of a digital fingerprinting**  
 25 **device.**

26 (b) The court shall order a law enforcement officer to provide  
 27 the fingerprints to the prosecuting attorney and the state police  
 28 department, in hard copy or in an electronic format approved by  
 29 the security and privacy council established by IC 10-13-3-34.

30 (c) The court is not required to order the defendant to be  
 31 fingerprinted if the defendant was previously arrested and  
 32 processed at the county jail.

33 (d) A clerk, court, law enforcement officer, or prosecuting  
 34 attorney is immune from civil liability for an error or omission in  
 35 the transmission of fingerprints, case history data, or sentencing  
 36 data, unless the error or omission constitutes willful or wanton  
 37 misconduct or gross negligence.

38 SECTION 11. IC 35-38-5-1 IS AMENDED TO READ AS  
 39 FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 1. (a) Whenever:

40 (1) an individual is arrested but no criminal charges are filed  
 41 against the individual; ~~or~~

42 (2) ~~at a criminal charges charge~~ filed against an individual ~~are~~

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is dropped because:

(A) of a mistaken identity;

(B) no offense was in fact committed; or

(C) there was an absence of probable cause; dismissed;

(3) an individual is arrested and charged with committing an offense and is subsequently found not guilty of committing the offense; or

(4) a charge, arrest, or conviction incorrectly appears on a person's criminal history as a result of identity deception, identity theft, or mistake;

the individual may petition the court for expungement of the records related to the arrest.

(b) A petition for expungement of records must be verified and filed in the court in which the charges were filed, or if no criminal charges were filed, in a court with criminal jurisdiction in the county where the arrest occurred. The petition must set forth:

(1) the date of the arrest;

(2) the charge;

(3) the law enforcement agency employing the arresting officer;

(4) any other known identifying information, such as the name of the arresting officer, case number, or court cause number;

(5) the date of the petitioner's birth; and

(6) the petitioner's Social Security number.

(c) A copy of the petition shall be served on the law enforcement agency and the state central repository for records.

(d) Upon receipt of a petition for expungement, the law enforcement agency shall notify the court of the name and address of each agency to which any records related to the arrest were forwarded. The clerk shall immediately send a copy of the petition to each of those agencies. Any agency desiring to oppose the expungement shall file a notice of opposition with the court setting forth reasons for resisting the expungement along with any sworn statements from individuals who represent the agency that explain the reasons for resisting the expungement within thirty (30) days after the petition is filed. A copy of the notice of opposition and copies of any sworn statements shall be served on the petitioner in accordance with the Rules of Trial Procedure. The court shall:

(1) summarily grant the petition;

(2) set the matter for hearing; or

(3) summarily deny the petition, if the court determines that:

(A) the petition is insufficient; or

(B) based on information contained in sworn statements

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1 submitted by individuals who represent an agency, the  
 2 petitioner is not entitled to an expungement of records.

3 (e) If a notice of opposition is filed and the court does not  
 4 summarily grant or summarily deny the petition, the court shall set the  
 5 matter for a hearing.

6 (f) After a hearing is held under this section, ~~the petition shall be~~  
 7 ~~granted unless~~ the court **may grant the petition if the court** finds

8 ~~(1) that~~ the conditions in subsection (a) have ~~not~~ been met. **In**  
 9 **determining whether to grant the petition, the court shall**  
 10 **consider whether:**

11 ~~(2) (1)~~ the individual has a record of arrests other than minor  
 12 traffic offenses; ~~or and~~

13 ~~(3) (2)~~ additional criminal charges are pending against the  
 14 individual.

15 SECTION 12. IC 35-38-5-5, AS AMENDED BY P.L.2-2005,  
 16 SECTION 124, IS AMENDED TO READ AS FOLLOWS  
 17 [EFFECTIVE JULY 1, 2007]: Sec. 5. (a) This section does not apply  
 18 to a request to a law enforcement agency for the release or inspection  
 19 of a limited criminal history to a noncriminal justice organization or  
 20 individual whenever the subject of the request is described in  
 21 IC 10-13-3-27(a)(8), **IC 10-13-3-27(a)(9)**, or ~~IC 10-13-3-27(a)(12).~~  
 22 **IC 10-13-3-27(a)(13).**

23 (b) A person may petition the state police department to limit access  
 24 to the person's limited criminal history to criminal justice agencies if  
 25 more than fifteen (15) years have elapsed since the date the person was  
 26 discharged from probation, imprisonment, or parole (whichever is  
 27 later) for the last conviction for a crime.

28 (c) When a petition is filed under subsection (b), the state police  
 29 department shall not release limited criminal history to noncriminal  
 30 justice agencies under IC 10-13-3-27.

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## COMMITTEE REPORT

Mr. Speaker: Your Committee on Courts and Criminal Code, to which was referred House Bill 1410, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 2, line 5, delete "seven (7)" and insert "**ten (10)**".

Page 2, line 12, after "(d)" insert "**The results of a criminal history background check, as described in subsection (c), may include only:**

- (1) criminal history data with disposition information; and**
- (2) information with respect to any arrest or criminal charge that occurred less than one (1) year before the date the background check was initiated even if a disposition concerning the arrest or criminal charge has not been entered.**

**(e)".**

Page 2, line 16, delete "(e)" and insert "**(f)**".

Page 3, line 33, delete "(f)" and insert "**(g)**".

Page 3, line 34, after "section" insert ",".

Page 3, line 34, delete "or a criminal history background check described".

Page 3, line 35, delete "under subsection (c),".

Page 3, delete line 36.

Page 3, line 37, delete "corporation,".

Page 3, line 37, delete "or" and insert ". **The school corporation is responsible for all costs associated with obtaining a criminal history background check as described under subsection (c).**".

Page 3, delete line 38.

Page 3, line 39, delete "(g)" and insert "**(h)**".

and when so amended that said bill do pass.

(Reference is to HB 1410 as introduced.)

HOY, Chair

Committee Vote: yeas 11, nays 0.

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## HOUSE MOTION

Mr. Speaker: I move that House Bill 1410 be amended to read as follows:

Page 1, between the enacting clause and line 1, begin a new paragraph and insert:

"SECTION 1. IC 10-13-3-36, AS AMENDED BY P.L.142-2006, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 36. (a) The department may not charge a fee for responding to a request for the release of a limited criminal history record if the request is made by a nonprofit organization:

(1) that has been in existence for at least ten (10) years; and

(2) that:

(A) has a primary purpose of providing an individual relationship for a child with an adult volunteer if the request is made as part of a background investigation of a prospective adult volunteer for the organization;

(B) is a home health agency licensed under IC 16-27-1;

(C) is a community mental retardation and other developmental disabilities center (as defined in IC 12-7-2-39);

(D) is a supervised group living facility licensed under IC 12-28-5;

(E) is an area agency on aging designated under IC 12-10-1;

(F) is a community action agency (as defined in IC 12-14-23-2);

(G) is the owner or operator of a hospice program licensed under IC 16-25-3; or

(H) is a community mental health center (as defined in IC 12-7-2-38).

(b) Except as provided in subsection (d), the department may not charge a fee for responding to a request for the release of a limited criminal history record made by the department of child services or the division of family resources if the request is made as part of a background investigation of an applicant for a license under IC 12-17.2 or IC 31-27.

(c) The department may not charge a fee for responding to a request for the release of a limited criminal history if the request is made by a school corporation, special education cooperative, or nonpublic school (as defined in IC 20-18-2-12) as part of a background investigation of a prospective or current employee or a prospective or current adult volunteer for the school corporation, special education cooperative, or nonpublic school.

(d) As used in this subsection, "state agency" means an authority, a

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board, a branch, a commission, a committee, a department, a division, or another instrumentality of state government, including the executive and judicial branches of state government, the principal secretary of the senate, the principal clerk of the house of representatives, the executive director of the legislative services agency, a state elected official's office, or a body corporate and politic, but does not include a state educational institution (as defined in IC 20-12-0.5-1). The department may not charge a fee for responding to a request for the release of a limited criminal history if the request is made:

- (1) by a state agency; and
- (2) through the computer gateway that is administered by the office of technology established by IC 4-13.1-2-1.

(e) The department may not charge a fee for responding to a request for the release of a limited criminal history record made by the Indiana professional licensing agency established by IC 25-1-5-3 if the request is:

- (1) made through the computer gateway that is administered by the office of technology; and
- (2) part of a background investigation of a practitioner or an individual who has applied for a license issued by a board (as defined in IC 25-1-9-1).

(f) The department may not charge a church or religious society a fee for responding to a request for the release of a limited criminal history record if:

- (1) the church or religious society is a religious organization exempt from federal income taxation under Section 501 of the Internal Revenue Code;
- (2) the request is made as part of a background investigation of a prospective or current employee or a prospective or current adult volunteer; and
- (3) the employee or volunteer works in a nonprofit program or ministry of the church or religious society, including a child care ministry registered under IC 12-17.2-6.

**(g) The department may not charge the school of education of a public or private postsecondary educational institution a fee for responding to a request for the release of a limited criminal history record if the request is made as part of a background investigation of a student before or after the student begins the student's field or**

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**classroom experience."**

Renumber all SECTIONS consecutively.

(Reference is to HB 1410 as printed February 7, 2007.)

KOCH

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### HOUSE MOTION

Mr. Speaker: I move that House Bill 1410 be amended to read as follows:

Page 2, line 4, delete "in state" and insert "**in-state**".

Page 2, line 9, delete "required under" and insert "**of in-state criminal records must be completed not later than one (1) day before the date on which an individual begins employment with the school corporation. A background check of out-of-state criminal records must be completed not later than (30) days after the date on which the individual begins employment with the school corporation.**".

Page 2, delete lines 10 through 11.

(Reference is to HB 1410 as printed February 7, 2007.)

KOCH

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### COMMITTEE REPORT

Madam President: The Senate Committee on Corrections, Criminal, and Civil Matters, to which was referred House Bill No. 1410, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 1, delete lines 1 through 17.

Delete page 2.

Page 3, delete lines 1 through 17, begin a new paragraph and insert:

"SECTION 1. IC 10-13-3-11, AS AMENDED BY P.L.20-2006, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 11. (a) As used in this chapter, "limited criminal history" means information with respect to any arrest or criminal charge, which must include:

(1) a disposition, **if the disposition is known**; and

**EH 1410—LS 7658/DI 106+**



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(2) a photograph of the person who is the subject of the limited criminal history, if a photograph is available.

~~(b) However, the term includes information about any arrest or criminal charge that occurred less than one (1) year before the date of a request even if no disposition has been entered.~~

SECTION 2. IC 10-13-3-11.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: **Sec. 11.5. As used in this chapter, "name based limited criminal history check" means a search of criminal history data maintained by the department that:**

**(1) is conducted using the subject's name and other identifying information that reasonably ensures the identification of the subject; and**

**(2) does not use fingerprint identification or another method of positive identification.**

SECTION 3. IC 10-13-3-19 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 19. As used in this chapter, "request" means asking for release or inspection of a limited criminal history by noncriminal justice organizations or individuals in a manner that:

**(1) provides the subject's name and other information that reasonably ensures the identification of the subject of the inquiry; and**

**(2) contains a statement of the purpose for which the information is requested.**

SECTION 4. IC 10-13-3-27, AS AMENDED BY P.L.1-2006, SECTION 171, AND AS AMENDED BY P.L.140-2006, SECTION 5 AND P.L.173-2006, SECTION 5, IS CORRECTED AND AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 27. (a) Except as provided in subsection (b), ~~on request in response to a request for a name based limited criminal history check from a noncriminal justice organization or an individual,~~ a law enforcement agency shall release a limited criminal history to or allow inspection of a limited criminal history by ~~the noncriminal justice organizations organization or individuals~~ **the individual** only if the subject of the request:

**(1) has applied for employment with ~~a~~ the noncriminal justice organization or individual;**

**(2) has applied for a license and *has provided* criminal history data ~~is~~ as required by law to be provided in connection with the license;**

**(3) is a candidate for public office or a public official;**

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(4) is in the process of being apprehended by a law enforcement agency;

(5) is placed under arrest for the alleged commission of a crime;

(6) has charged that the subject's rights have been abused repeatedly by criminal justice agencies;

(7) is the subject of a judicial decision or determination with respect to the setting of bond, plea bargaining, sentencing, or probation;

(8) has volunteered services that involve contact with, care of, or supervision over a child who is being placed, matched, or monitored by a social services agency or a nonprofit corporation;

**(9) is employed by the noncriminal justice organization or the individual to provide services that involve contact with, care of, or supervision over:**

**(A) a child; or**

**(B) an individual who is:**

**(i) a mentally ill individual (as defined in IC 12-7-2-131);**

**(ii) physically disabled; or**

**(iii) a developmentally disabled individual (as defined in IC 12-7-2-62);**

~~(9)~~ **(10)** is currently residing in a location designated by the department of child services (established by ~~IC 31-33-1.5-2~~ *IC 31-25-1-1*) or by a juvenile court as the out-of-home placement for a child at the time the child will reside in the location;

~~(10)~~ **(11)** has volunteered services at a public school (as defined in IC 20-18-2-15) or nonpublic school (as defined in IC 20-18-2-12) that involve contact with, care of, or supervision over a student enrolled in the school;

~~(11)~~ **(12)** is being investigated for welfare fraud by an investigator of the division of family resources or a county office of family and children;

~~(12)~~ **(13)** is being sought by the parent locator service of the child support bureau of the ~~division~~ department of ~~family and children,~~ *child services*;

~~(13)~~ **(14)** is or was required to register as a sex ~~and violent~~ offender under ~~IC 5-2-12~~ *IC 11-8-8*; or

~~(14)~~ **(15)** has been convicted of any of the following:

(A) Rape (IC 35-42-4-1), if the victim is less than eighteen (18) years of age.

(B) Criminal deviate conduct (IC 35-42-4-2), if the victim is less than eighteen (18) years of age.

(C) Child molesting (IC 35-42-4-3).

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- (D) Child exploitation (IC 35-42-4-4(b)).
- (E) Possession of child pornography (IC 35-42-4-4(c)).
- (F) Vicarious sexual gratification (IC 35-42-4-5).
- (G) Child solicitation (IC 35-42-4-6).
- (H) Child seduction (IC 35-42-4-7).
- (I) Sexual misconduct with a minor as a felony (IC 35-42-4-9).
- (J) Incest (IC 35-46-1-3), if the victim is less than eighteen (18) years of age.

However, limited criminal history information obtained from the National Crime Information Center may not be released under this section except to the extent permitted by the Attorney General of the United States.

(b) **In response to a request for a name based limited criminal history check from the noncriminal justice organization**, a law enforcement agency shall allow inspection of a limited criminal history by and release a limited criminal history to **any of** the following noncriminal justice organizations:

- (1) Federally chartered or insured banking institutions.
- (2) Officials of state and local government for any of the following purposes:
  - (A) Employment with a state or local governmental entity.
  - (B) Licensing.
- (3) Segments of the securities industry identified under 15 U.S.C. 78q(f)(2).

(c) **The department shall provide a noncriminal justice organization or an individual who requests a limited criminal history check under this section with the following notice in writing:**

**"The results of the criminal background check you have requested include only records of arrests or convictions that occurred in Indiana. These results do not include any arrests or convictions that may have occurred in another state, nor do they include an arrest or delinquency finding that may have occurred while the subject was a minor."**

~~(c)~~ (d) Any person who **knowingly or intentionally** uses limited criminal history for any purpose not specified under this section commits a Class A misdemeanor.

SECTION 5. IC 10-13-3-33 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 33. (a) The council shall adopt rules under IC 4-22-2 to:

- (1) assure the completeness and accuracy of criminal history data;
- (2) protect information from loss, alteration, destruction, or

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improper direct access to the information files;

(3) prevent unreasonable interference with the regular discharge of the duties of employees of law enforcement agencies; ~~and~~

**(4) establish procedures to ensure the uniform and efficient transmission of criminal history data to the department, including the development of an electronic format for the submission of criminal history data; and**

~~(4)~~ **(5)** carry out this chapter.

(b) If a person makes a challenge under section 31(b) of this chapter, the department shall:

(1) make the changes requested, if it determines the data is in error; or

(2) conduct a hearing under IC 4-21.5-3, if requested by the person making the challenge.

(c) The rules adopted under this chapter must provide for inspection in a reasonable and timely manner.

SECTION 6. IC 10-13-3-36, AS AMENDED BY SEA 526-2007, SECTION 147, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 36. (a) The department may not charge a fee for responding to a request for ~~the release of a name based~~ limited criminal history ~~record check~~ if the request is made by a nonprofit organization:

(1) that has been in existence for at least ten (10) years; and

(2) that:

(A) has a primary purpose of providing an individual relationship for a child with an adult volunteer if the request is made as part of a background investigation of a prospective adult volunteer for the organization;

(B) is a home health agency licensed under IC 16-27-1;

(C) is a community mental retardation and other developmental disabilities center (as defined in IC 12-7-2-39);

(D) is a supervised group living facility licensed under IC 12-28-5;

(E) is an area agency on aging designated under IC 12-10-1;

(F) is a community action agency (as defined in IC 12-14-23-2);

(G) is the owner or operator of a hospice program licensed under IC 16-25-3; or

(H) is a community mental health center (as defined in IC 12-7-2-38).

(b) Except as provided in subsection (d), the department may not charge a fee for responding to a request for ~~the release of a name based~~

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limited criminal history ~~record~~ **check** made by the department of child services or the division of family resources if the request is made as part of a background investigation of an applicant for a license under IC 12-17.2 or IC 31-27.

(c) The department may not charge a fee for responding to a request for ~~the release of a~~ **name based** limited criminal history **check** if the request is made by a school corporation, special education cooperative, or nonpublic school (as defined in IC 20-18-2-12) as part of a background investigation of a prospective or current employee or a prospective or current adult volunteer for the school corporation, special education cooperative, or nonpublic school.

(d) As used in this subsection, "state agency" means an authority, a board, a branch, a commission, a committee, a department, a division, or another instrumentality of state government, including the executive and judicial branches of state government, the principal secretary of the senate, the principal clerk of the house of representatives, the executive director of the legislative services agency, a state elected official's office, or a body corporate and politic, but does not include a state educational institution. The department may not charge a fee for responding to a request for ~~the release of a~~ **name based** limited criminal history **check** if the request is made:

- (1) by a state agency; and
- (2) through the computer gateway that is administered by the office of technology established by IC 4-13.1-2-1.

(e) The department may not charge a fee for responding to a request for ~~the release of a~~ **name based** limited criminal history record **check** made by the Indiana professional licensing agency established by IC 25-1-5-3 if the request is:

- (1) made through the computer gateway that is administered by the office of technology; and
- (2) part of a background investigation of a practitioner or an individual who has applied for a license issued by a board (as defined in IC 25-1-9-1).

(f) The department may not charge a church or religious society a fee for responding to a request for ~~the release of a~~ **name based** limited criminal history record **check** if:

- (1) the church or religious society is a religious organization exempt from federal income taxation under Section 501 of the Internal Revenue Code;
- (2) the request is made as part of a background investigation of a prospective or current employee or a prospective or current adult volunteer; and

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- (3) the employee or volunteer works in a nonprofit program or ministry of the church or religious society, including a child care ministry registered under IC 12-17.2-6.

**(g) The department may not charge the school of education of a public or private postsecondary educational institution a fee for responding to a request for a name based limited criminal history record check if the request is made as part of a background investigation of a student before or after the student begins the student's field or classroom experience.**

SECTION 7. IC 12-7-2-61 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 61. "Developmental disability" means the following:

- (1) Except as provided in subdivision (2), before July 1, 1993, the term means a disability of an individual that:

(A) is attributable to:

- (i) mental retardation, cerebral palsy, epilepsy, or autism;
- (ii) any other condition found to be closely related to mental retardation, because this condition results in similar impairment of general intellectual functioning or adaptive behavior or requires similar treatment and services; or
- (iii) dyslexia resulting from a disability described in this subdivision;

(B) originates before the person is eighteen (18) years of age;

(C) has continued or is expected to continue indefinitely; and

(D) constitutes a substantial disability to the individual's ability to function normally in society.

- (2) For purposes of IC 12-10-7 and IC 12-28-1 before July 1, 1993, and for purposes of ~~IC 12~~ **this title** after June 30, 1993, **and for purposes of IC 10-13-3-27**, the term means a severe, chronic disability of an individual that:

(A) is attributable to a mental or physical impairment, or a combination of mental and physical impairments (other than a sole diagnosis of mental illness);

(B) is manifested before the individual is twenty-two (22) years of age;

(C) is likely to continue indefinitely;

(D) reflects the individual's need for a combination and sequence of special, interdisciplinary, or generic care, treatment, or other services that are of lifelong or extended duration and are individually planned and coordinated; and

(E) results in substantial limitations in at least three (3) of the following:

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- (i) Self-care.
- (ii) Receptive and expressive language.
- (iii) Learning.
- (iv) Mobility.
- (v) Self-direction.
- (vi) Capacity for independent living.
- (vii) Economic self-sufficiency."

Page 3, line 20, after "(a)" insert **"As used in this chapter, "expanded criminal history check" means a criminal history background check of an individual that includes a search of records from a period of ten (10) years preceding the date of the background check that are maintained by:**

- (1) a county in Indiana; and**
- (2) a county in another state, if the individual who is the subject of the background check resided in another state within the ten (10) year period preceding the date of the background check.**

**(b)".**

Page 3, line 28, strike "or".

Page 3, line 30, after "corporation;" insert **"or**

**(4) volunteer with the school corporation;"**.

Page 3, line 33, strike "(b)" and insert **"(c)".**

Page 3, line 36, delete "(c)" and insert **"(d)".**

Page 3, line 36, delete "criminal" and insert **"check of".**

Page 3, delete lines 37 through 40.

Page 3, line 41, delete "(2)".

Page 3, line 41, delete ";" and insert **", and:**

- (1) an expanded criminal history check; or**
- (2) a national criminal history background check;"**.

Page 3, run in lines 36 through 41.

Page 4, line 1, after "2007" insert **"and for each individual having direct contact with children who enters into a contract with the school corporation or is employed by an entity that has a contract with a school corporation after June 30, 2007".**

Page 4, line 1, delete "A background check of in-state criminal" and insert **"A background check required under this subsection must be completed not later than three (3) months after the individual begins employment or volunteer service with the school corporation. In addition, a policy adopted under this section must require the person who provides the background check to the school corporation to include a disclaimer clearly explaining what information is not included in the background check, and**

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**prominently noting that an arrest or a pending charge is not evidence of guilt."**

Page 4, delete lines 2 through 6.

Page 4, line 7, delete "(d)" and insert "(e)".

Page 4, line 8, delete "(c)" and insert "(d)".

Page 4, line 15, delete "(e)" and insert "(f)".

Page 4, line 17 after "entity" insert **"that is subject to the Fair Credit Reporting Act (15 U.S.C. 1681 et seq.)"**.

Page 4, line 18, after "section." insert **"In evaluating a private entity, the school corporation shall consider the entity's compliance with subsection (j)."**

Page 4, line 19, delete "(f)" and insert "(g)".

Page 4, line 22, strike "limited".

Page 4, line 22, after "each" insert **"volunteer or"**.

Page 4, line 25, after "the" insert **"volunteer's or"**.

Page 4, line 27, after "Each" insert **"volunteer or"**.

Page 4, line 30, strike "limited".

Page 4, line 30, strike "or a national criminal history".

Page 4, line 31, strike "background check".

Page 4, line 31, after "the" insert **"volunteer or"**.

Page 4, line 33, delete "." and insert **"or the volunteer begins volunteering."**

Page 4, line 34, before "individual" insert **"volunteer or"**.

Page 4, line 35, strike "national".

Page 4, line 36, after "Each" insert **"volunteer or"**.

Page 4, line 37, before "individual" insert **"volunteer begins volunteering or the"**.

Page 4, line 38, after "of the" insert **"volunteer's or"**.

Page 4, line 40, after "Each" insert **"volunteer or"**.

Page 4, line 41, before "individual" insert **"the volunteer begins volunteering or"**.

Page 5, line 2, after "of the" insert **"volunteer's or"**.

Page 5, line 4, before "individual's" insert **"volunteer's or"**.

Page 5, line 8, after "Each" insert **"volunteer or"**.

Page 5, line 9, before "individual" insert **"volunteer or"**.

Page 5, line 10, before "individual's" insert **"volunteer's or"**.

Page 5, line 10, strike "limited".

Page 5, line 13, after "employment" insert **"or the volunteer's volunteer opportunity"**.

Page 5, line 16, strike "or".

Page 5, line 18, after "corporation;" insert **"or (C) volunteers with a school corporation;"**.

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Page 5, line 22, after "corporation" insert "**or who volunteers**".

Page 5, line 23, after "the" insert "**volunteer has or the**".

Page 5, line 29, after "the contract" insert "**or volunteer opportunity**".

Page 5, line 29, after "a contract" insert "**or volunteer opportunity**".

Page 5, line 36, delete "(g)" and insert "**(h)**".

Page 5, line 36, strike "limited".

Page 5, line 38, strike "limited".

Page 5, line 38, after "history." delete "The" and insert "**However, the**".

Page 5, line 39, delete "is responsible for all" and insert "**may elect to pay**".

Page 5, line 41, delete "(c)" and insert "**(d)**".

Page 5, line 42, delete "(h)" and insert "**(i)**".

Page 6, after line 1, begin a new paragraph and insert:

**"(j) A private entity that has entered into a contract with a school corporation to perform a criminal history check under this section may not use the information compiled as part of the criminal history check of the individual for any other purpose without the express written consent of the individual who is the subject of the criminal history check. A private entity that violates this subsection commits a Class A infraction.**

SECTION 8. IC 34-30-2-149.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: **Sec. 149.5. IC 35-38-1-28 (Concerning errors or omissions in the transmission of fingerprints, case history data, or sentencing data).**

SECTION 9. IC 35-38-1-28 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: **Sec. 28. (a) Except as provided in subsection (c), immediately after sentencing for an offense, the court shall order the defendant to be fingerprinted by an individual qualified to take fingerprints. The fingerprints may be recorded in any reliable manner, including by the use of a digital fingerprinting device.**

**(b) The court shall order a law enforcement officer to provide the fingerprints to the prosecuting attorney and the state police department, in hard copy or in an electronic format approved by the security and privacy council established by IC 10-13-3-34.**

**(c) The court is not required to order the defendant to be fingerprinted if the defendant was previously arrested and processed at the county jail.**

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**(d) A clerk, court, law enforcement officer, or prosecuting attorney is immune from civil liability for an error or omission in the transmission of fingerprints, case history data, or sentencing data, unless the error or omission constitutes willful or wanton misconduct or gross negligence.**

SECTION 3. IC 35-38-5-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 1. (a) Whenever:

- (1) an individual is arrested but no criminal charges are filed against the individual; ~~or~~
- (2) ~~at a criminal charges charge~~ filed against an individual ~~are is dropped because:~~
  - ~~(A) of a mistaken identity;~~
  - ~~(B) no offense was in fact committed; or~~
  - ~~(C) there was an absence of probable cause; dismissed;~~
- (3) an individual is arrested and charged with committing an offense and is subsequently found not guilty of committing the offense; or**
- (4) a charge, arrest, or conviction incorrectly appears on a person's criminal history as a result of identity deception, identity theft, or mistake;**

the individual may petition the court for expungement of the records related to the arrest.

(b) A petition for expungement of records must be verified and filed in the court in which the charges were filed, or if no criminal charges were filed, in a court with criminal jurisdiction in the county where the arrest occurred. The petition must set forth:

- (1) the date of the arrest;
- (2) the charge;
- (3) the law enforcement agency employing the arresting officer;
- (4) any other known identifying information, such as the name of the arresting officer, case number, or court cause number;
- (5) the date of the petitioner's birth; and
- (6) the petitioner's Social Security number.

(c) A copy of the petition shall be served on the law enforcement agency and the state central repository for records.

(d) Upon receipt of a petition for expungement, the law enforcement agency shall notify the court of the name and address of each agency to which any records related to the arrest were forwarded. The clerk shall immediately send a copy of the petition to each of those agencies. Any agency desiring to oppose the expungement shall file a notice of opposition with the court setting forth reasons for resisting the expungement along with any sworn statements from individuals who

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represent the agency that explain the reasons for resisting the expungement within thirty (30) days after the petition is filed. A copy of the notice of opposition and copies of any sworn statements shall be served on the petitioner in accordance with the Rules of Trial Procedure. The court shall:

- (1) summarily grant the petition;
- (2) set the matter for hearing; or
- (3) summarily deny the petition, if the court determines that:
  - (A) the petition is insufficient; or
  - (B) based on information contained in sworn statements submitted by individuals who represent an agency, the petitioner is not entitled to an expungement of records.

(e) If a notice of opposition is filed and the court does not summarily grant or summarily deny the petition, the court shall set the matter for a hearing.

(f) After a hearing is held under this section, ~~the petition shall be granted unless~~ the court **may grant the petition if the court finds**

~~(1) that~~ the conditions in subsection (a) have ~~not~~ been met. **In determining whether to grant the petition, the court shall consider whether:**

- ~~(2) (1)~~ the individual has a record of arrests other than minor traffic offenses; ~~or and~~
- ~~(3) (2)~~ additional criminal charges are pending against the individual.

SECTION 10. IC 35-38-5-5, AS AMENDED BY P.L.2-2005, SECTION 124, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 5. (a) This section does not apply to a request to a law enforcement agency for the release or inspection of a limited criminal history to a noncriminal justice organization or individual whenever the subject of the request is described in IC 10-13-3-27(a)(8), **IC 10-13-3-27(a)(9)**, or ~~IC 10-13-3-27(a)(12)~~. **IC 10-13-3-27(a)(13).**

(b) A person may petition the state police department to limit access to the person's limited criminal history to criminal justice agencies if more than fifteen (15) years have elapsed since the date the person was discharged from probation, imprisonment, or parole (whichever is later) for the last conviction for a crime.

(c) When a petition is filed under subsection (b), the state police department shall not release limited criminal history to noncriminal justice agencies under IC 10-13-3-27."

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Renumber all SECTIONS consecutively.  
and when so amended that said bill do pass.

(Reference is to HB 1410 as reprinted February 13, 2007.)

STEELE, Chairperson

Committee Vote: Yeas 8, Nays 0.

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